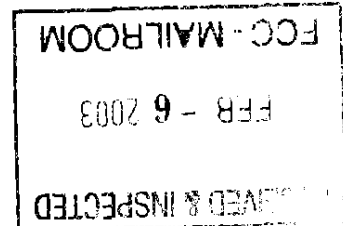


Before the
Federal Communications Commission
Washington, D.C. 20554



In the Matter of
Amendment of Section 73.622(b)
Table of Allotments,
Digital Television Broadcast Stations.
(Tyler, Texas)
)
)
)
MM Docket No. 01-244
RM-10234

In the Matter of
Amendment of Section 73.622(b)
Table of Allotments,
Digital Television Broadcast Stations.
(Lufkin, Texas)
)
)
)
MM Docket No. 01-245
RM-10235

To: The Chief, Video Division, Media Bureau

**REPLY TO OPPOSITION OF CIVCO, INC.
TO PETITION FOR RECONSIDERATION OF ORDER DENYING STAY**

Pursuant to Section 1.429(g) of the Commission's Rules, International

Broadcasting Network ("IBN") hereby replies to the opposition filed by CivCo, Inc.
("CivCo") on January 28, 2003, in the above-captioned consolidated proceedings.

I

CivCo's opposition completely ignores and fails to respond to several crucially
important issues clearly set forth in IBN's petition for reconsideration. CivCo offers no
opposition whatsoever to paragraphs III, IV and V of IBN's petition for reconsideration.
Moreover, CivCo offers no response to portions of paragraphs II and VI of IBN's

petition. IBN suggests that there is a reason for CivCo's failure to respond. That reason is that there can be no valid rebuttal because the statements to which CivCo failed to respond are irrefutable

II.

CivCo has not denied that a stay is essential to preserve the integrity of a decision yet to be rendered by the Commission's designated authority in these proceedings. This is a compelling reason for issuance of a stay. It is of paramount importance and must not be restricted by a series of requirements that has no basis in the Rules.

III.

CivCo has not denied that the Order denying a stay improperly prejudged factual and legal issues which must be lawfully and objectively considered in response to the pending petition for reconsideration. It is an undeniable fact that paragraph 4 of the Order did just that. Paragraph 4 of the Order inappropriately asserted as fact unresolved matters that are still pending and must be considered in a future order yet to be issued in response to the petition for reconsideration IBN filed on November 8, 2002. The Order's reliance upon such matters was a fatal flaw that renders the Order unsustainable.

IV.

CivCo has not refuted the fact that, for the reasons set forth in Paragraph V of IBN's petition, IBN is likely to prevail on the merits. On the basis of the entire record in these proceedings, the Commission can reach no other conclusion than that the substitution of channels was contrary to the public interest and should not have been granted.

V.

CivCo continues to refer to IBN's stations as "not Class A-eligible facilities." The fact is that IBN's stations were indeed eligible for Class A status, and their eligibility was officially recognized by the Commission. CivCo's predecessor and alter ego, Civic License Holding Company, Inc. ("Civic"), effectively blocked the relicensing of IBN's stations as Class A stations when it filed applications for modified construction permits for the same channels IBN's stations are licensed to use.² For that reason, IBN concluded that it could not make the required certifications of non-interference until, as expected, Civic withdrew its applications. Ultimately, Civic failed to withdraw its applications. It should be noted, however, that IBN's stations were treated as having primary status until the deadline for relicensing had passed, at which time they were no longer accorded primary status. Nevertheless, the classification of IBN's stations is not the real issue in these proceedings. The fundamental issue is whether CivCo has met its burden of proving the substitution of channels to be in the public interest. IBN respectfully submits that CivCo has failed to meet that burden and that the substitution of channels was contrary to the public interest.

VI.

CivCo asserts that the channel substitutions "facilitate the implementation of DTV service to its communities of license, and issuance of a stay would cause unnecessary

¹ See Opposition at 2

² BMPCDT-20000501ADS; BMPCDT-20000501ADE

harm and delay to both CivCo and those communities.”³ CivCo is wrong. The truth is that substitution of channels has been used by CivCo **as** a means of delay. Both CivCo and its corporate twin LibCo, Inc. (“LibCo”) have a very poor record for implementing DTV. LibCo has, in fact, been admonished by the Commission for its failure to construct DTV facilities.⁴ **As** has been previously shown, the substitution of channels will delay DTV service to CivCo’s communities of license.

VII.

CivCo has not shown why **the** four criteria enumerated in *Virginia Petroleum Jobbers Association v. Federal Power Commission*⁵ should apply. CivCo apparently fails to distinguish between a stay issued by an administrative agency and a stay issued by a court. The power of an administrative agency to issue a stay of its own order is unfettered by *Virginia Petroleum Jobbers*. Indeed, under Section 1.102(a)(2) of the Commission’s Rules, a stay **is** automatic upon the filing of a petition for reconsideration. Likewise, Section 1.102(b)(2) of the Rules recognizes no such restriction. The only requirement that must be fulfilled before a stay is issued is that a petition for reconsideration must have been filed. That requirement was met when IBN filed its petition for reconsideration on November 8, 2002. IBN has not sought a court-ordered stay of an administrative agency’s order but has requested that the Commission’s designated authority exercise her unfettered power to issue a stay in order to protect the

³ See Opposition at 2.

⁴ See, e.g., the Commission’s letters of admonishment dated June 3, 2002, in reference to KGBT-DT, KPLC-DT, WALB-DT, WIS-DT, WLOX-DT and WWAY-DT.

integrity of a decision yet to be rendered in these proceedings. Accordingly, *Virginia Petroleum Jobbers* has no relevance and is inapplicable.

VIII.

CivCo has based its opposition on the two Orders previously issued by the Commission's designated authority in these proceedings.⁶ Both Orders are the subject of pending petitions for reconsideration' and, therefore, have no value as precedent. CivCo's arguments cannot be supported by Orders that cannot lawfully be used as precedent.

IX.

CivCo apparently believes that its stations' status as full power stations automatically entitles it to a substitution of channels regardless of the unanimous opposition of all third parties who filed comments and the thousands of persons who signed petitions. CivCo's position is untenable. It makes a mockery of the Commission's well-established and legally-required practice of soliciting and carefully considering comments in rulemaking proceedings.' The Liberty Corporation, parent of CivCo, waged a determined campaign to convince the public that the substitution of channels should be granted.' The public was not persuaded, however, and thousands came forward to oppose the substitution as being contrary to the public interest."

⁵ *Virginia Petroleum Jobbers Association v. FPC*, 259 F2d 921 (D.C. Cu 1958) In this case, the Court exercised judicial restraint by declining to issue an injunction staying proceedings of an administrative agency

⁶ See Opposition footnotes 1, 2, 5, 6 and 7

⁷ The petitions for reconsideration were filed on November 8, 2002, and January 21, 2003.

⁸ 5 U.S.C. 553; 47 C.F.R. 1.399 *et seq*

⁹ *Lufkin Daily News*, page 1, October 26, 2001. *Longview News-Journal*, page 1D, October 31, 2001

¹⁰ Affidavits of Bert McKinney, C P A, dated November 12, 2001. The affidavits are included in the record of these proceedings.

Despite the clear and unmistakable record in these proceedings, which shows conclusively that the substitution was not in the public interest, CivCo demands that IBN's petition for reconsideration be denied. CivCo has not made its case, and its opposition is unconvincing and without merit.

X.

For all of the foregoing reasons, and for **all** of the reasons set forth in IBN's previous filings, IBN respectfully urges that the Order denying a stay be reconsidered and that the stay requested by IBN be promptly issued

Respectfully submitted,

INTERNATIONAL BROADCASTING NETWORK

By its President

A handwritten signature in black ink, appearing to read "Paul J. Broyles", written in a cursive style.

Paul J. Broyles
5206 FM 1960 West, Suite 105
Post Office Box 691 111
Houston, Texas 77269-1111

Telephone. 281-587-8900

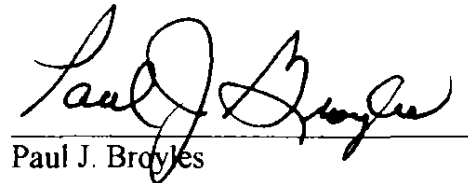
E-Mail: IBN@evl.net

February 5, 2003

CERTIFICATE OF SERVICE

I, Paul J. Broyles, hereby certify that on this 5th day of February 2003 a copy of the foregoing REPLY TO OPPOSITION OF CIVCO, INC. TO PETITION FOR RECONSIDERATION OF ORDER DENYING STAY has been served by first-class mail, postage prepaid, upon the following:

John S. Logan
Scott S. Patrick
Courtney P. Manzel
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, NW
Suite 800
Washington, DC 20036-6802
(Counsel for Civic License Holding Company, Inc., and CivCo, Inc.)


Paul J. Broyles

International Broadcasting Network
5206 FM 1960 West, Suite 105
Post Office Box 691111
Houston, Texas 77269-1111

Telephone: 281-587-8900

E-Mail: IBN@evl.net